

AMENDMENT AFTER FINAL REJECTION UNDER 37 C.F.R. § 1.116

Applicant: Joseph G. Marcinkiewicz

Serial No.: 09/738,467

Filing Date: December 15, 2000

Docket: K315.106.101

Title: BRUSHLESS MACHINE CONTROL

REMARKS

Claims 4-20 and 22 are pending. By this Amendment, claims 1-3, 21 and 23-24 are cancelled without prejudice or disclaimer, and claims 4-5 are amended for clarity and not for reasons related to patentability.

Personal Interview

Applicant acknowledges, with appreciation, the courtesy extended Applicant's representative during the December 1, 2004 personal interview. During the interview it was discussed that Applicant would file the attached Affidavit to show relationship of the inventor and Lovett '767 (U.S. Patent No. 6,225,767), and that an Amendment would be filed to overcome Nygren (U.S. Patent No. 6,525,504). Applicant's separate record of the substance of the interview is incorporated in the following remarks.

35 U.S.C. § 102(e) and 103(a) Rejections

The previous Office Action rejected claims 1-3 and 23-24 under 35 U.S.C. § 102(e) over Nygren and claims 4-22 under 35 U.S.C. § 103(a) over Nygren in view of Lovett '767. Applicant respectfully traverses these rejections.

By this Amendment, claims 1-3 and 23-24 are cancelled to expedite prosecution. Accordingly, Applicant submits that the 35 U.S.C. § 102(e) rejections are overcome.

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Regarding the 35 U.S.C. § 103 rejection, Lovett '767 (which is a continuation of U.S. Patent No. 6,091,215, issued July 18, 2000) is not prior art against the claimed invention. Attention is directed to the attached Declaration Under 37 CFR § 1.132, which confirms that the inventor listed on this patent application, Joseph Marcinkiewicz, invented the subject matter disclosed in the Lovett '767 patent relied on in the September 2, 2004 Office Action. See MPEP § 715.01(a). Additionally, and independently, Nygren and Lovett '767 are not properly combinable to meet the claimed features and fail to teach or suggest the claimed features. Accordingly, Applicant submits that independent claim 4, and its dependent claims, define patentable subject matter.

Applicant submits that this Amendment After Final Rejection is proper for entry because, in keeping with the personal interview, it clearly places the application in condition for allowance by addressing and overcoming the only outstanding rejections. Favorable reconsideration and prompt allowance are requested. No fees are believed due in connection with this paper, but the Commissioner is authorized to charge any fees that may be due to Deposit Account No. 500471.

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The Examiner is invited to telephone the undersigned to advance prosecution.

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Respectfully submitted,


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Please grant any extension of time necessary for entry; charge any fee due to Deposit Account No. 500471.

CERTIFICATE OF FACSIMILE TRANSMISSION

The undersigned hereby certifies that this paper or papers, as described herein, are being transmitted by facsimile to the U.S. Patent and Trademark Office, Fax No. (703) 872-9306 on this 21st day of December, 2004.

By 
Name: William M. Hienz III